

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

FORT WORTH DIVISION

JENNIFER VANDERSTOK;
MICHAEL G. ANDREN;
TACTICAL MACHINING, LLC, a limited
liability company; and
FIREARMS POLICY COALITION, INC., a
nonprofit corporation,

Plaintiffs,

and

BLACKHAWK MANUFACTURING GROUP
INC. d/b/a 80 PERCENT ARMS,

Intervenor-Plaintiff,

v.

MERRICK GARLAND, in his official capacity as
Attorney General of the United States;
UNITED STATES DEPARTMENT OF JUSTICE;
STEVEN DETTELBACH, in his official capacity
as Director of the Bureau of Alcohol, Tobacco,
Firearms and Explosives; and
BUREAU OF ALCOHOL, TOBACCO,
FIREARMS AND EXPLOSIVES,

Defendants.

Civil Action No. 4:22-cv-691-O

DECLARATION OF DANIEL LIFSCHITZ

I, Daniel Lifschitz, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746,
that the following statements are true and correct to the best of my knowledge:

1. I am over 18 years of age, competent to testify, and have personal knowledge of the matters stated herein.

2. I am the President of BlackHawk Manufacturing Group Inc. d/b/a 80 Percent Arms (collectively “BlackHawk” or “we”/”our”). BlackHawk is a member in good standing of the Firearms Policy Coalition, Inc., and has been since 2020.

3. BlackHawk has been in business as 80 Percent Arms since 2013. Its headquarters and physical office are in Fort Worth, Texas. The company was previously located in Garden Grove, California, but after the legal environment in California became inhospitable to BlackHawk’s business, the company and its employees relocated to Texas.

4. BlackHawk is a producer and e-commerce retailer of the items at issue in this case, marketed colloquially as “80 Percent Lowers,” as well as tools and jigs that individuals can use to personally manufacture firearm frames and receivers. Our customers are do-it-yourself hobbyists who appreciate the challenge of manufacturing their own firearms. Under the ATF’s longstanding application of the Gun Control Act of 1968 (“GCA”), evidenced and established through extensive classification determinations issued to the industry over many decades, BlackHawk’s products do not meet the GCA’s definition of a “frame or receiver” of a firearm. Thus, BlackHawk has been able to lawfully sell its products directly to consumers, who can lawfully purchase its products through its website and ship products to those customers through the mail. For as long as BlackHawk has been in operation this practice did not subject it or its customers to potential criminal liability or enforcement by the ATF or the United States Department of Justice.

5. BlackHawk's position in the marketplace was solidified by its U.S. patent for one of the best-selling jigs on the market for individuals to use in personally manufacturing AR-style receivers. The product is marketed on 80 Percent Arms' website as the "Easy Jig Gen 3 Multi- Platform" and retails as a standalone product for \$349.99:



6. Since ATF Final Rule 2021-R-05F was published in April 2022 ("Final Rule"), BlackHawk devoted extensive time and resources to try to understand what the Final Rule says and how the Final Rule would affect BlackHawk. After reading the Final Rule's vague and confusing text and listening to the public statements of President Biden and Attorney General Garland, it appears that the intent of the Final Rule is to improperly reclassify all products colloquially marketed as "80 Percent Lowers" as the legal equivalent of complete, functional, regulated "frames or receivers" under federal law.

7. BlackHawk is set up to make retailing of these products painless to customers using a direct-to-consumer model where orders are fulfilled directly. This is possible because the products that it sells do not meet the statutory definition of a "frame or

receiver.” Reclassifying those products as “frames or receivers” by agency rulemaking ignores the plain text of the GCA and the federal government’s historical application of the GCA. Given the uncertainty over the meaning and enforcement of the Final Rule BlackHawk must now weigh the prospect of being forced to abandon the entire business model it has built up over the past decade due to concerns that its continued operations under its existing business model could subject it and its customers to criminal charges.

8. Earlier in this case, the government asserted that there is no irreparable harm because businesses such as BlackHawk can simply get a license and continue with business as usual. As stated above, BlackHawk does business as 80 Percent Arms which is a fully licensed FFL, but being an FFL does not permit 80 Percent Arms to operate or survive under the regulatory scheme of the Final Rule, as nearly 100% of 80 Percent Arms’ business is for the products described above that the Final Rule newly seeks to regulate as firearms.

9. In recent weeks, BlackHawk has learned that Defendants have made statements (in court filings and hearings, but not in the text of the Final Rule) suggesting that the government interprets the Final Rule to allow for the continued direct sale of those products marketed colloquially as “80 Percent Lowers,” but seemingly limited to AR-style “80 Percent Lowers,” as long as they were sold by themselves, without jigs, tools, or instructions. This creates confusion and great concern for BlackHawk and its 80 Percent Arms customers, as it is unclear how a physical object that is not classified as a “frame or receiver” when sold on its own could suddenly be transformed into a “frame or receiver” merely because of its combination with tools, jigs, and/or instructions, which are all

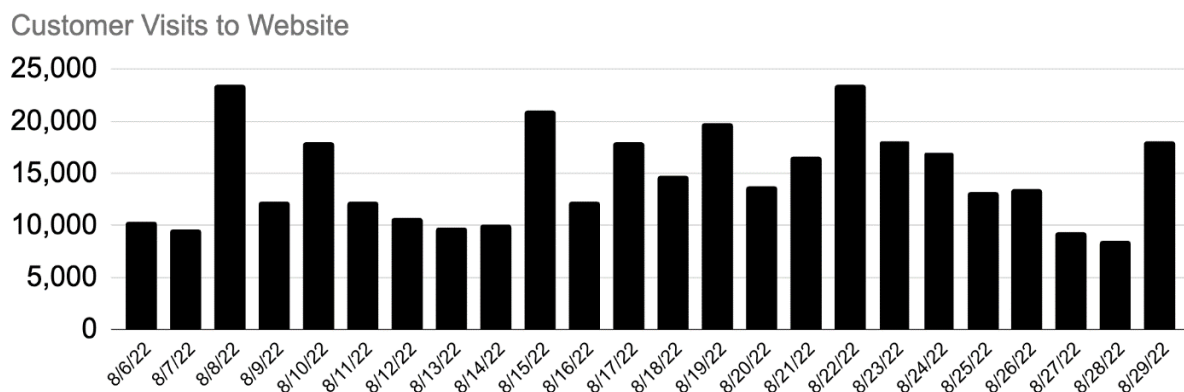
unregulated materials and if sold together, or simply made available, could be considered a criminal offense. Because this interpretation is not self-evident from the text of the Final Rule, BlackHawk is unsure to what extent that interpretation is legally binding on the government now and in the future. BlackHawk is also unsure whether the following combinations of items may be sold with an “80 Percent Lower” for an AR-style rifle without turning it into a regulated “frame or receiver”: (1) a jig and instructions, but no tools; (2) a jig and tools, but no instructions; (3) a jig, but no tools or instructions; (4) tools and instructions, but no jig; or (5) tools, but no jig or instructions, as well as other combinations that may arise in the future.

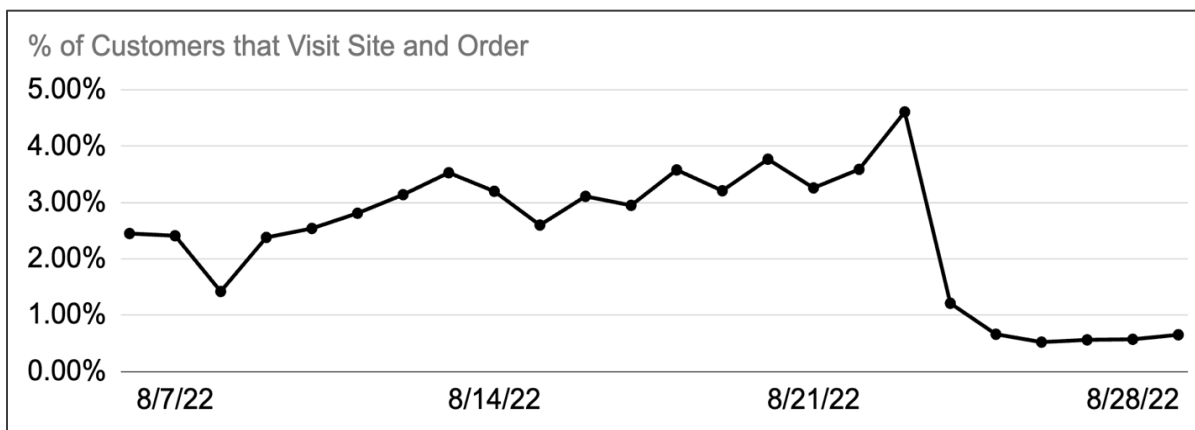
10. It is equally unclear what Defendants’ position is on so-called “80 Percent Lowers” when it comes to handgun varieties, which ATF previously determined were not firearm “frames or receivers.” BlackHawk—via 80 Percent Arms—also sells items colloquially marketed as “80 Percent Frames” that are based on designs previously determined by ATF not to be the frame of a firearm, as well as jigs for individuals to use in the self-manufacture of handgun frames. Defendants appear to be silent about the Final Rule’s application to these products.

11. Even though BlackHawk faced this regulatory uncertainty, in an effort to keep its business alive, based on what it understood to be the government’s stated position and its newly expanded interpretation of the GCA, BlackHawk decided to continue selling its “80 Percent Lowers” for AR-style receivers, a small assortment of replacement parts for tools, and miscellaneous accessories after the Final Rule’s effective date of August 24, 2022. Out of fear of exposing 80 Percent Arms to potential criminal liability, BlackHawk

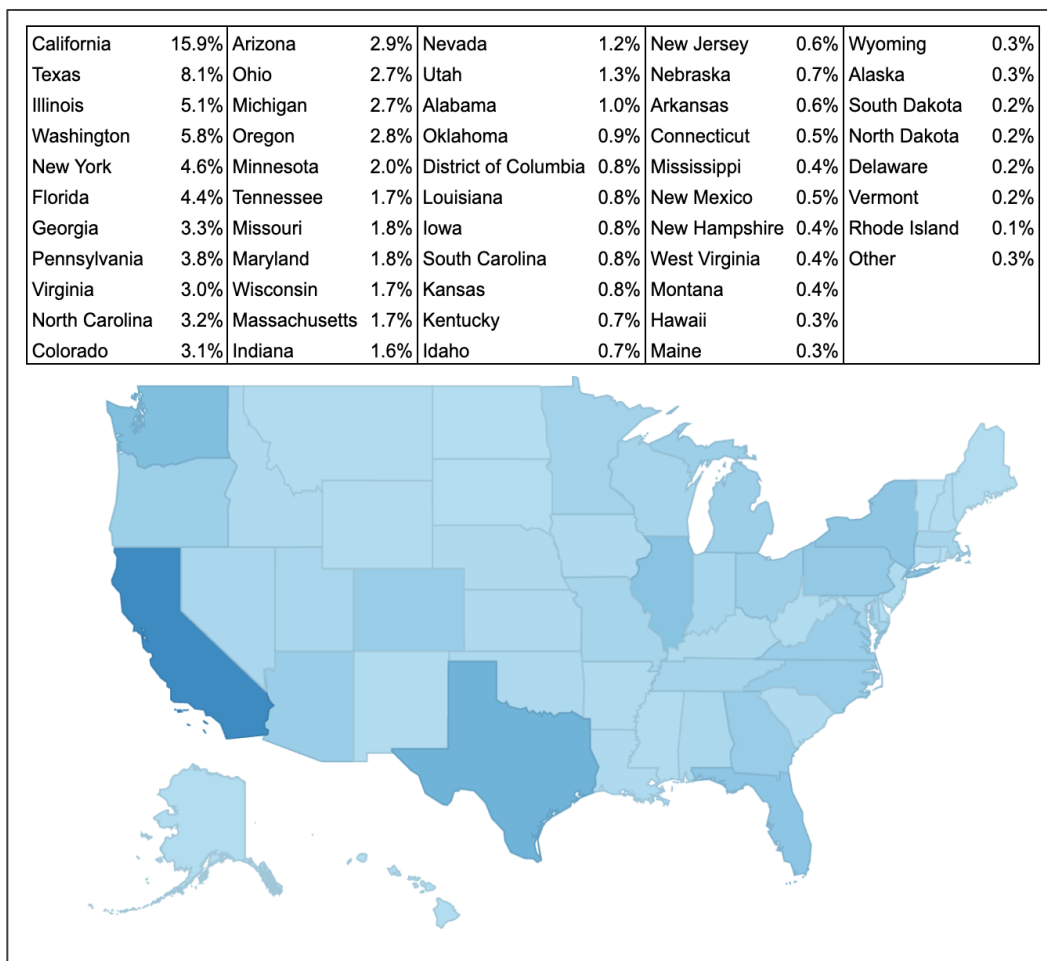
discontinued all sales of jigs and jig accessories and non-AR-style “80 Percent Lowers” (which together make up approximately 65.4% of 80 Percent Arms’ orders) by listing them as “out of stock” on our website. We also deleted from 80 Percent Arms’ website the instructions for how to use its tools and jigs.

12. Our customers are now fearful and confused resulting in further dramatic and unsustainable declines in sales across 80 Percent Arms’ website. Not only have we significantly cut 80 Percent Arms’ product offerings, but customers are no longer purchasing many other products that are still available on 80 Percent Arms’ website. The graphs below show that website traffic has by and large remained the same during the past month, but the percentage of customers willing to purchase items has dropped precipitously. Typically, BlackHawk could count on 3–5% of customers who visit the 80 Percent Arms website to purchase something, a number considered healthy within the e-commerce industry.





13. The map below summarizes the percent of online sessions by region. As a leader in the marketplace, customers come from across the U.S. to browse 80 Percent Arms' website.



14. In September the situation has only gotten worse. Customers are hesitant to purchase from us since the Final Rule has gone into effect, and are unsure if we are now operating illegally by selling our 80% receivers. Customers are unable to source jigs, specifically our patent-protected third generation jigs in order to convert their 80% receivers, so they are abandoning doing business with us entirely. After millions of dollars and years of investments in developing jig products, we can't sell the product that made us a leader in the industry.

15. Despite BlackHawk's efforts to keep the business afloat, revenue has plummeted since the Final Rule took effect on August 24, 2022. Compared to our average daily revenue in 2022 prior to the Final Rule's effective date, our average daily revenue since the rule took effect has dropped by more than 90%.

16. Based on our interactions with prior and potential customers, it is clear that many people believe, in the wake of the uncertainty created by the Final Rule, that all of BlackHawk's "80 Percent Lowers" sold via 80 Percent Arms direct to consumers without serial numbers are banned by the Final Rule and that purchasing these products could potentially subject 80 Percent Arms and these individuals to criminal liability. Without assurances for customers that they are not illegally purchasing a "firearm" when they buy an "80 Percent Lower" from 80 Percent Arms, with or without a jig or instructions, our sales will not recover. Below are some examples of the sorts of comments we have received from our 80 Percent Arms existing and prospective customers:

- *"I might be wrong, but I thought it was illegal to sell 80% lowers if you don't have an FFL, and they have to be serialized. ????? I hope you can clear this up." – Aug 31, 2022*

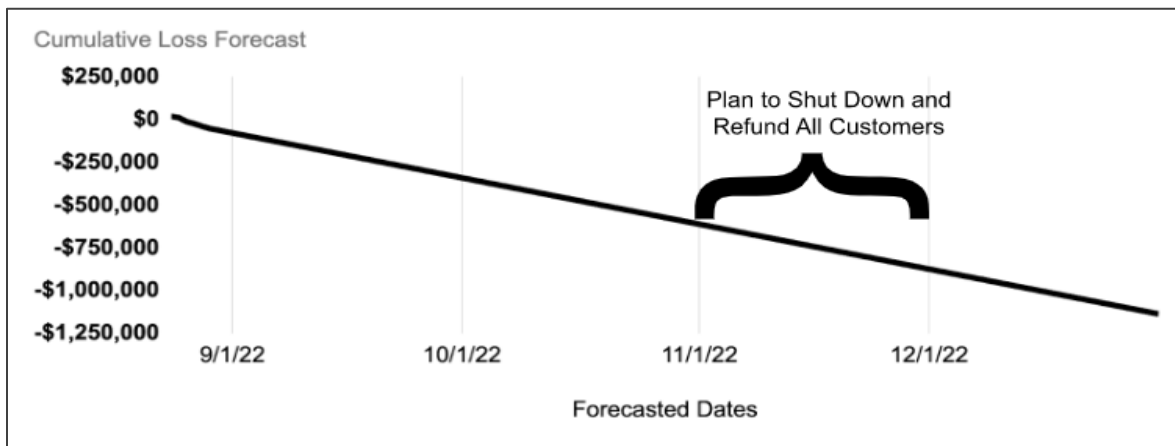
- *“While I appreciate your stance on this, I cannot accept shipment given the existing rule. I understand you have your own legal team. I’m barred in the state of Texas and went to the University of Virginia School of Law. I have reviewed the regulation and I am not comfortable receiving delivery without the item being shipped to an FFL.” – Aug 26, 2022*
- *“O.K. how does this work since the ATF now requires that 80% lowers be serialized?” – Aug 24, 2022*
- *“Several parts if you order were 80% lower receivers, which as far as I am aware are now required to be serialized per the new ATF rule - as a result of this, I dont need any portion of the order, and was wondering when it would be canceled?” – Sep 1, 2022*
- *“are 80% lowers still becoming illegal on the 1st? thanks!” – Aug 31, 2022*
- *“Good afternoon, I was shopping and was wondering if you guys still sold the jigs for 80 percent frames? I know the recent atf law made the frames illegal but are the jigs illegal now too? And if they are still legal/for sale, can I buy one from your website?” – Aug 29, 2022*
- *“are 80% lowers still becoming illegal on the 1st? thanks!” – Aug 31, 2022*
- *“Based on the new rules, does it mean that 80% Glock style lower frames are banned from being sold to the public?” – Sep 18, 2022*
- *“HOW DO I GO ABOUT BUYING A 80 PERCENT JIG KIT. I UNDERSTAND THEY WILL NOT SHIP THE LOWER WITH THE JIG KITS ANYMORE BUT WHAT IF YOU JUST NEED THE JIG KIT. pLEASE TELL ME THEY DID NOT MAKE THE JIG KITS ILLEGAL ALSO.” - Sep 18, 2022*
- *“Are 80% lowers required to be sent to an FFL now?” – Sep 19, 2022*
- *“You guys ARE aware that 80% lowers are basically just expensive paperweights without a jig to complete them, right? IOW, the lowers you proudly proclaim to be ‘still shipping’ are worthless to anyone who doesn't have a jig available to finish them.” – Sep 20, 2022*
- *“I have purchased 3 of your 80 lowers. I got caught up in the situation where you stopped selling the Jigs and now I can't seem to be able to purchase one to complete my project. Is there anything that you can do to help me out in getting some Jigs?” – Sep 20, 2022*

17. 80 Percent Arms' inability to sell its unique, patented jig is also severely damaging BlackHawk's business. The 80 Percent Arms Easy Jig Gen 3 Multi-Platform is one of 80 Percent Arms' most demanded products and attracts a significant number of customers to 80 Percent Arms. The availability of that jig on 80 Percent Arms' website is essential to its ability to attract and make sales to new customers. 80 Percent Arms' jig and the "80% Lowers" that we sell are complementary goods that are used together, each creating a demand for the other. The inability to sell the jig drastically reduces sales for the "80% Lowers," as well as other ancillary products and accessories.

18. Vendors across our supply chain have begun to refuse to work with us. This includes payment processors, metal treatment businesses, and other distributors. E-commerce companies have also begun to suggest they may no longer be able to serve our business without additional clarity that what we are doing is legal.

19. Like any small business, BlackHawk has fixed operating costs, the most notable of which is compensation for employees and costs for its physical office in Fort Worth, Texas. In the wake of the Final Rule's catastrophic effects on 80 Percent Arms' business, we have suspended plans to hire additional employees. BlackHawk is doing its best to retain as many 80 Percent Arms employees as possible while awaiting clarity from Defendants, or the courts, on whether the Final Rule is lawful. Unfortunately, 80 Percent Arms' sales since the Final Rule took effect have declined so precipitously that we are on track to be operating at a loss and no longer profitable.

20. BlackHawk maintains cash reserves for warranties, refunds, and replacements. If 80 Percent Arms is unable to ship products such as jigs and jig accessories that were previously ordered by customers, and continues to be unable to make a profit, we will be forced to shut down the business. Though 80 Percent Arms does have enough cash on hand to continue paying our expenses for 2 to 3 months while we operate at a loss, we will be forced to shut down our business and cease operations if this trend continues for much longer:




Unless we are given a chance to recover and stabilize our revenues, we will be forced to lay off our entire workforce, refund customers, and dissolve the business. Our bank has refused to extend credit to us due to the Final Rule and their concerns it will put us out of business, and there is no source of additional financing we could rely on to maintain the business once our cash reserves are depleted.

21. In the absence of a nationwide preliminary injunction or other injunctive relief that provides sufficient certainty to enable us to fully transact business with our customers and vendors across the U.S., 80 Percent Arms will not be able to stay in business

long enough to receive a final judgment from this Court, not including any additional time needed for appellate review.

DATED this 22nd day of September, 2022.



Daniel Lifschitz
President, BlackHawk Manufacturing
Group Inc. d/b/a 80 Percent Arms